REMARKS

Provisional election is hereby made, with traverse, to prosecute the invention of Group I, comprising claims 1-6, 11, 13, 14, 18 and 20.

Before considering the merits of the restriction requirement it is noted this Application has already undergone substantive examination. A search of the prior art was conducted, and the first substantive action issued July 26, 2004. While some changes were made to the claims, the requirement that the apparatus include a vaporizer was present in independent apparatus claim 1 that was the subject of the July 26, 2004 Action. Thus, Applicant is perplexed why the Examiner now considers restriction to be necessary.

The restriction requirement is respectfully traversed. The Official Action has not established a prima facie justification for the requirement for election. The Official Action states:

> In this case the process as claimed can be practiced by another materially different apparatus. For example, the process can be practiced on an apparatus without a vaporizer because the vapor phase can be obtained in a different device independent from the apparatus for depositing the film.

The Examiner's suggestion in this regard is not understood. As noted supra, the apparatus claims previously examined required that the apparatus include a vaporizer. Thus, the requirement for restriction at this stage of the examination seems to be purely arbitrary.

In requiring restriction, the Examiner also notes the inventions are classified in different classes and sub-classes, thus alluding to the fact that the inventions would involve divergent fields of search. However, as the Examiner is well aware, such a factor per se is not a basis for determining distinctiveness in accordance with MPEP 806. Moreover, as noted supra, the

HAYES SOLOWAY P.C.
130 W. CUSHING STREET
TUCSON, AZ 85701
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Examiner has already conducted a substantive search of the apparatus claims in which the apparatus included a vaporizer, and the method claims.

Furthermore, it is respectfully submitted that there is nothing in 35 USC § 121 that gives the Patent Office the authority to require restriction between different statutory classes of claims unless the claims cover "independent and distinct inventions." It is respectfully submitted that the statutory requirements not having been met here vis-à-vis Groups I and II respectively, the Examiner should withdraw the requirement for restriction and provide Applicant with an action on the merits of the withdrawn claims.

It should be noted that restriction requirements as prescribed by 35 USC § 121 are discretionary with the Examiner, and in view of the remarks above, the restriction requirement should be withdrawn.

It is noted the Examiner acknowledges claims 21-28 are linking claims and that these claims may be entitled to examination in the instant application subject to allowance of the elected claims.

In summary therefore, all of the claims are believed to be directed to a single invention. However, so as to be fully responsive, applicant provisionally elects to prosecute Group I, i.e., claims 1-6, 11, 13, 14, 18 and 20, and it is requested that, without further action thereon, the remaining claims be retained in this application pending disposition of the application, and for rejoinder and/or possible filing of a divisional application.

An action on the merits is respectfully requested.

HAYES SOLOWAY P.C.
130 W. CUSHING STREET
TUCSON, AZ 85701
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our deposit account number 08-1391.

Respectfully submitted,

Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 12, 2005, at Tucson, Arizona.

By Sharon McKniff

NPS:sm

HAYES SOLOWAY P.C.
130 W. CUSHING STREET
TUCSON, AZ 85701
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567